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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,233	04/10/2001	John A. Kink	OPHD-06331	8942

23535 7590 04/06/2006
MEDLEN & CARROLL, LLP
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

EXAMINER

SHARAREH, SHAHNAM J

ART UNIT PAPER NUMBER

1617

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/832,233

Examiner

Shahnam Sharareh

Applicant(s)

KINK ET AL.

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The appeal brief filed on November 29, 2004 is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

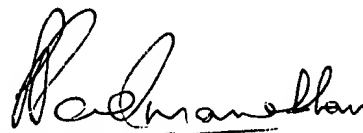
(d) ☒ *Brief is NOT Compliant w/ 37 CFR 41.37*
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Pursuant to the Order issued by the USPTO Board of Patent Appeals and Interferences mailed on December 7, 2005 ("the Order"), the Appeal Brief filed November 29, 2004 is declared defective because it is not compliant with the rules under 37 CFR §41.37 (c). Applicant's attention is directed to page 4 of the Order, where the Board has articulated the sections missing from the Appeal Brief filed November 29, 2004. Also, the Order returned the application to the Examiner to consider the substitute Appeal Brief. Accordingly, the Examiner's Answer mailed on May 4, 2005 has been vacated and a new Examiner's Answer will be filed in response to a substitute Appeal Brief in compliance with 37 CFR § 41.37.

To avoid dismissal of the appeal, appellant must submit an appeal brief that is compliant with the new rules within ONE MONTH or THIRTY DAYS from the mailing of this communication, whichever is longer. Extensions of time may be granted under 37 CFR 1.136.

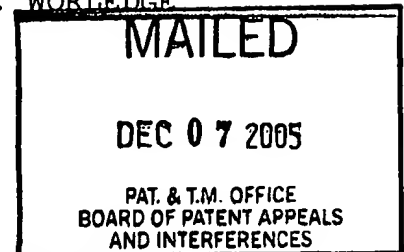
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00. pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. KINK and KATHERINE L. WORLEDGE

Application No. 09/832,233



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on September 29, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed November 29, 2004 and the examiner's answer mailed May 4, 2005 have used the format set forth in 37 CFR § 1.192(c). However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Accordingly, the appeal brief filed on November 29, 2004 and the examiner's answer mailed May 4, 2005 does not comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group.

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of

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evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c) (1) (ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed November 29, 2004 and the examiner's answer mailed May 4, 2005:

- 1) "Summary of claimed subject matter" as set forth in 37 CFR § 41.37(c) (1) (v);
- 2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c) (1) (vi);
- 3) "Argument" as set forth in 37 CFR § 41.37(c) (1) (vii);
- 4) "Evidence appendix" as set forth in 37 CFR § 41.37(c) (1) (ix); and
- 5) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c) (1) (x).

A substitute appeal brief and a revised examiner's answer that is in compliance with 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled

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More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.


Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of November 29, 2004 defective; 2) request appellants to file a substitute appeal brief in compliance with 37 CFR § 41.37; 3) vacate the examiner's answer and provide a revised examiner's answer in accordance with the new rules effective September 13, 2004, and in response to the substitute appeal brief; and 4) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


Craig R. Feinberg
Program and Resource Administrator
(571)272-9797

Application No. 09/832,233

cc: MEDLEN & CARROLL, LLP
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

CRF/lbg